IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO. 640 OF 2005

IN

SUMMARY SUIT NO. 2430 OF 2005

FAG Bearings India Ltd ...Plaintiffs.
vs.
M/s. Deep Bearing ....Defendants

Mr. Mustafa Doctor with Nooruddin Dhilla
i/by. M/s. Hariani and Co.
for the plaintiffs.
Mr. Pravin Diwan with Mr. Akram
i/by. Harilal Thakar and Co.
for the defendants.

CORAM: SMT. NISHITA MHATRE, J.

DATE : 27TH MARCH, 2006.

P.C. :

1. The present suit has been filed as a Summary suit by the plaintiff claiming an amount of Rs.13,92,434/- together with interest thereon. The plaintiff has based its claim against the defendant who is its stockist. According to the

plaintiff goods worth of Rs.8,84,184/- were sold and delivered to the defendant. A part of this amount was paid by the plaintiff being Rs.4,57,905/-. Four cheques drawn by the defendant in favour of the plaintiff were issued aggregating to Rs.4,96,279/-. These cheques were dishonoured. The dishonoured memo indicates that the defendant stopped payment of these cheques. The plaintiff then supplied more goods to the defendant worth Rs.9,69,155. This amount has also remained unpaid. The plaintiff has thus claimed a sum of Rs.13,92,434/- for goods sold and delivered. Invoices inrepsect of these bills are placed on record. Admittedly these amounts have remained unpaid.

2. In reply to the Summons for Judgment the defendant has contended that he was entitled to the Retailer Incentive Scheme and an additional T.O.B. under which the defendant was entitled to a discount of 15%. According to the defendant therefore the amount claimed on the basis of invoice was incorrect and he was required to be

given a discount of Rs.9,25,354/-. The learned counsel for the defendant submits that the plaintiffs are not entitled to the decree since they have suppressed the underlying contract on which the invoices are founded. This underlying contract according to the defendants has been annexed only to the rejoinder and not to the plaint. According to the learned counsel this amounts to suppression of material facts on the part of the plaintiff as the underlying contract indicates that the discount which the defendant was entitled to was much higher than stated in the plaint. The judgment of the Supreme Court in the case of **S.P. Chengalvaraya (dead) by L.Rs. Appellants vs. Jagannath (dead) by L.Rs. and Ors. reported in AIR 1994 SC 853** is relied on.

3. Mr. Doctor for the plaintiff submits that if the defendant had any claim against the plaintiff it is open for the defendant to file a counter claim. He submits that the plaintiff having been able to support its contention in the summary suit a decree must follow. Insupport of

his contention he relies upon the judgment in the case **Suraj Sanghi Finance Ltd vs. Credential Finance Ltd and Ors. reported in AIR 2002 Bombay 481.**

4. Having heard the learned counsel for both the parties, in my view, the submission of the learned counsel for the defendant is untenable. Admittedly the cheques which were issued by the defendant have been dishonoured. The amounts to be paid by the defendant against the invoice has also remained outstanding. If the defendant had any claim against the plaintiff the defendant ought to have filed a suit or atleast a counter claim. A Summary suit can be maintained against the defendant based on invoices as has been held in a catena of judgments. The underlying contract does not in any manner indicate that there was a running account between the parties.

5. In my opinion therefore the plaintiffs would be entitled to a decree. However I am of the view that an opportunity needs to be given to

the defendant to deposit an amount of Rs.14,77,915.58/- in this court within a period of 12 weeks from today, failing which the decree would follow. Conditional leave is therefore granted to the defendant on its depositing the aforesaid amount in the aforesaid stipulated time.

6. In the event the amount is deposited the Prothonotary and Senior Master, High Court, Bombay to invest the same in fixed deposit of any nationalised bank, initially for a period of three years, to be renewed thereafter.

7. Suit is transferred to the list of Commercial Causes. Written statement or points of defence to be filed four weeks from today. Affidavits, list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on board of the learned Judge taking Commercial Causes.

sd/-

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